IN THE HIGH CORUT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.597 OF 2003

Sukhdev Singh Jamwal,
Aged 62 years, R/o.701-B,
Bhavani Complex,
Bhavani Shankar Road, Dadar (W),
Mumbai 400 028. Appellant
(Org.Accused no.1)

versus

State of Maharashtra Respondents

Mr.C.G.Gavanekar with Deepa Sawant with A.C.Gavanekar, adv. for appellant.

D.R.More, AGP for state.

J.C.Satpute, adv. for CBI.

CORAM : D.G.DESHPANDE, J.
DATE : 17th August 2004.

ORAL JUDGEMENT :-

1. This is an appeal filed by the original accused no.1 challenging his conviction u/s.11 of the Prevention of Corruption Act (hereinafter referred to as "the P.C.Act" for short) by which he was convicted and sentenced to suffer imprisonment till rising of Court. A fine of

Rs.25,000/- was directed to be paid by the appellant, in default, to suffer R.I. for one month.

2. I have heard Mr.Gavanekar for accused, Mr.Satpute for respondent no.2 and Mr.Shringarpure for respondent no.1.

3. The case against the accused was that he was working as Regional Iron and Steel Controller, Mumbai during the relevant time. He had powers and jurisdiction over State of Maharashtra and, State of Gujrat and Goa and had powers to inspect and call for documents from the Companies consuming Iron and Steel products. Accused no.1 was to visit M/s.Marathwada Alloy Steel Company Limited (hereinafter referred to as "MASCO" for short). He did visit the MASCO during period 26th April 1983 and 29th April 1983 for official work of inspection. He stayed at Hotel Aurangabad Ashok along with his wife and children. The booking was done by accused no.2. Hotel charges were paid by MASCO.. Accused no.2 was the Executive Manager of MASCO.. It is further alleged that accused no.2 arranged booking of five air-tickets to and fro from Mumbai to Aurangabad to enable the accused no.1

to visit to Aurangabad during the period aforementioned. Therefore, the case against the accused is that being a public servant, he accepted and obtained for himself and for his family members the pecuniary advantage by way of hotel accommodation and air travel to and fro from Mumbai without consideration from MASCO whom he knew and have been concerned in the proceedings in terms of inspecting MASCO's documents being the Regional Iron and Steel Controller in the capacity of public servant.

4. The Trial Court found that the charges against present accused no.1 are proved. Therefore, he came to be convicted and sentenced till rising of Court and fine of Rs.25,000/-, in default R.I. for one month. Accused no.2 was also convicted, but he does not appear to have filed any appeal. At least, it is not brought to my notice till today.

5. Learned counsel for the accused has made two submissions challenging the order of conviction. According to him, firstly, the offence was allegedly committed in 1986. First Information Report was lodged on 15th May 1987. CBI filed report on 15th March 1990. Initially charge was

framed by the Trial Court in September 1997. it was amended in October 2002 and both, the original charge as well as the amended charge, were under the new P.C.Act, and therefore, according to the learned advocate for accused, if the offence is committed while the P.C.Act of 1947 was in force, then framing charge against the accused under the new P.C.Act of 1988 and prosecuting him and trying him under the new P.C.Act of 1988, vitiates the trial. Mr.Gavanekar, learned counsel for appellant in that regard relied upon a judgement of Supreme Court reported in 2002-CLR.L.J.-2982 (Jagan M. Seshadri Vs. State of Tamil Nadu) which was in turn relied upon by me when a similar question arose in Criminal Appeal No.270 of 2001 decided on 30th June 2004.

6. In the judgement of Supreme Court (2002-Cri.L.J.2982), paragraph no.4 refers to facts of the case before it and has observed :-

> "4. There is no dispute that when the offence was committed it was the 1947 Act which was in operation. It is also not in dispute that at the time when FIR was lodged, it was also the 1947 Act

> which was in operation. Reliance on S.30(2) of the 1988 Act to hold that offence for which the appellant should have been charged was one which fell under S.13 of the 1988 Act is wholly misplaced."

In the Criminal Appeal decided by me as referred to above vide Criminal Appeal No.270 of 2001, the accused was prosecuted u/s 13(1)(e) for accumulation of wealth beyond known sources of income. The Supreme Court in the aforesaid judgement was mainly concerned with similar provisions of accumulation of wealth, and therefore, it was found that Section 13(1)(e) was materially different from Section 5 of the Act, and therefore, in that background the trial was vitiated by the Supreme Court. I followed the aforesaid judgement in Criminal Appeal No.270 of 2001 because that was also a case of similar nature namely accumulation of wealth beyond known sources of income u/s 13(1)(e). Therefore, in that case offence was committed by the accused when the old Act of 1947 was in force and when no provision similar to that of Section 13(1)(e) of the new Act of 1988 was there in the 1947 Act,

then the trial of the accused in that criminal appeal before me was ordered to be vitiated and I therefore allowed the appeal.

7. However, the point that distinguishes the present appeal and the appeal decided by me being Criminal Appeal No.270 of 2001, is vital and important. In this case before me, the accused is not charged u/s 13(1)(e) of the P.C. Act of 1988. He is charged u/s 13(1)(d)(ii) which lays down that a public servant is said to have committed an offence of criminal misconduct, if he by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

8. The provisions of Section 5 of the Old P.C.Act of 1947 and particularly Section 5(1)(d) are almost identical with that of Section 13(1)(d)(ii) of the New P.C.Act of 1988. Section 5(1)(d) of the Old P.C.Act, 1947 reads as follows:-

> "5. Criminal Misconduct :-
>
> (1) ... ...

> (d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage".

9. It will be clear that the charge framed against the accused originally and the amended charge, even though it refers to Section 13(1)(d) of the New P.C.Act of 1988, it is almost identical to Section 5(1)(d) of the Old P.C.Act of 1947. The Supreme Court in the aforesaid judgement has considered provisions of Section 30(2) of the Act of 1988 and has observed that a bare reading of Section 30(2) of the 1988 Act shows that any act done or any action taken or purported to have been done or taken under or in pursuance of the repealed Act of 1947, shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of the Act. It will, therefore, be clear from the aforesaid provisions of Section 30(2) that if there is no inconsistency, then the acts done under the Old

Act of 1947 are not affected by the New Act of 1988. There is absolutely no inconsistency in between Section 5(1)(d) of the Old Act of 1947 and Section 13(1)(d)(ii) of the New Act of 1988, and therefore, even if the offence is committed by the accused when the Old Act of 1947 was in force, his trial under the New Act of 1988 will not get vitiated. Therefore, this submission of the learned counsel for the accused cannot be accepted.

10. Mr.Gavanekar also urged that sanction order to prosecute the accused was under the Old Act of 1947, and, therefore, trying the accused under the New Act of 1988 will vitiate the trial. He drew my attention to the original sanction order, a copy of which is available with me and shown to me, and about authenticity of which no dispute was raised by Mr.Satpute, in the last part of the sanction, the sanctioning authority has noted as under :-

> "Now, THEREFORE, the President hereby accord sanction under Section 197(i)(a) of the Criminal Procedure Code, 1973 (Act 2 of 1974) and Section 6(1)(a) of

> the Prevention of Corruption Act, 1947 (Act II of 1947) and corresponding section 19(1)(a) of the Act, 1988 for the prosecution of the said Shri Sukdev Singh Jamwal for the above offence and for any other offence/offences punishable under other provisions of law in respect of the acts aforesaid and for the taking of cognizance of the said offences by a court of competent jurisdiction."

11. Mr.Gavanekar, learned counsel for accused, therefore, contended that the sanction was granted under the provisions of Old Act of 1947 and, therefore, framing of charge under the New Act of 1988 and the subsequent trial of the accused under the New Act of 1988 vitiates the trial.

12. Mr.Satpute, learned counsel appearing for respondent no.2 tried to contend that in this sanction order and more particularly in the part of sanction, which was reproduced by me earlier, there is a reference to New Act of 1988 also i.e. Section 19(1)(a), and therefore, the sanction can

be considered as one under the Old Act of 1947 as well as New Act of 1988.

13. I put a specific question to Mr.Satpute as to what is the case of prosecution in that regard, whether the prosecution contends that the sanction was obtained either under both the acts or was under the Old Act of 1947 or was under the New Act of 1988? Mr.Satpute contends that the sanction as it is should be taken into consideration in that regard.

14. However, Mr.Gavanekar drew my attention to the evidence of PW.9 examined before the Special Court by the prosecution to prove the aforesaid sanction. She was Special Commissioner, Government of Manipur and she was examined to prove the sanction. In her evidence, in para no.2, she has clearly stated that, "On examining said documents I satisfied as to the prima facie commission of offence by said Jamwal punishable under Prevention of Corruption Act, 1947". Mr.Gavanekar, therefore, submits that it is clearly proved that the sanction was accorded under the Old Act of 1947 and not under the New Act of 1988.

15. Mr.Satpute relied upon a judgement of Supreme Court reported in 1995-SCC (Cri)-546 (M.W.Mohiuddin Vs. State of Maharashtra) and drew my attention to head note "C" and also to para 9 on the basis of which the aforesaid head note is prepared. A perusal of para 9 shows that no where in that para the Supreme Court has considered the aspect of sanction either directly, indirectly or even remotely. The Supreme Court has considered the provisions of Section 5(2) of the Old Act of 1947 and compared them with the provisions of Section 13(d)(ii) R/W S.13(2) and Section 7 of the New Act of 1988. This judgement, therefore, is of no help to the prosecution because it does not cover or deal with the aspect of sanction. I again asked a question to Mr.Satpute as to whether he has got any authority of Supreme Court on the point involved namely sanction being under the Old Act and charge & prosecution under New Act, and he expressed that he has no such authority.

16. Therefore, it is clear that this is a case where the sanctioning authority clearly and specifically admits that the sanction was accorded under the Old Act of 1947. If that is so, reference to the New Act of 1988 to the

sanction is of no help because the sanction is the out come of application of mind of the sanctioning authority and if the sanctioning authority on applying it's mind comes to a conclusion and grants sanction to prosecute the appellant under the old Act, the prosecution cannot be permitted to argue that the sanction should be taken as one under the New Act. The act of giving sanction is not an act mechanical or sterio-type act, and therefore, sanction under the Act of 1947 cannot be taken or treated as sanction under the New Act of 1988.

17. Since Mr.Satpute was also asked by me as to whether he has to make any other submission in this regard and whether Mr.Gavanekar wants to make any other submission relating to case, both have denied to make any further submissions.

18. It is, thereore, clear that even though the first submission of Mr.Gavanekar cannot be accepted, the second submission has to be accepted because this is a case where the sanction was accorded for prosecuting the accused no.1 under Old Act of 1947 and admittedly the charge was framed by the Trial Court under the New Act and trial was also conducted under the

New Act of 1988. No dispute was raised before me whether in such a situation the trial vitiates or not by Mr.Satpute. Consequently, appeal is allowed. Conviction of the accused u/s 11 of the P.C.Act 1988 and the sentence imposed upon him is set aside. If the accused has paid find, the same shall be returned to him.

(D.G.DESHPANDE, J.)